

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VADIM BABYREV,

Petitioner,

No. 19 CV 11693-LTS

-against-

BRIAN BELFI et al.,

Respondents.

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ORDER

This matter, brought pursuant to 28 U.S.C. section 2254, was initiated by Petitioner filing his petition pro se. (Docket Entry No. 1.) The Court appointed counsel to represent Petitioner, (Docket Entry No. 8), and Petitioner, again pro se, filed a “Supplemental Pleading” requesting that the Court supplement his petition to include a claim that the Kirby Forensic Psychiatric Facility’s response to COVID-19 violates his right to Due Process protected by the Fifth and Fourteenth Amendments. (Docket Entry No. 20.) By order dated May 19, 2020, the Court construed the “Supplemental Pleading” as a supplemental element to Petitioner’s section 2254 petition. (Docket Entry No. 26.) Respondents move to dismiss the “Supplemental Pleading” on grounds that the claims raised therein are not cognizable as a section 2254 action. (Docket Entry No. 29, at 5.)

Respondents’ motion to dismiss the “Supplemental Pleading” (Docket Entry No. 20) is granted, without prejudice to litigation of the claim as one under 42 U.S.C. section 1983. On consent of the parties, Docket Entry Number 20 is construed as a pleading asserting a claim of violation of the Eighth Amendment pursuant to 42 U.S.C. section 1983 without the need for further revised filing. (Docket Entry No. 30, at 2; Docket Entry No. 33, at 2.)

Respondent is directed to answer or move with respect to the claim deemed asserted in Docket Entry Number 20 by **June 24, 2020**. If any motion is filed, Petitioner's counsel must file a response on Petitioner's behalf by **July 3, 2020**. Any reply must be filed by **July 10, 2020**.

SO ORDERED.

Dated: New York, New York
June 9, 2020

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge